



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1992

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767-8828

OR92-384

Dear Mr. Griffith:

The City of Austin asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16330.

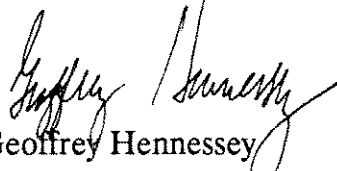
Pursuant to the Open Records Act, the City of Austin has received a request from counsel for a Brackenridge Hospital employee for all information concerning employees of Brackenridge Hospital who were diagnosed with Hepatitis A between November 1, 1991 and January 4, 1992 and the departments in which they worked. The City claims that this information is excepted by Open Records Act sections 3(a)(1), 3(a)(2), and 3(a)(3).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, except for information meeting one of the express exceptions of the Act. Section 3(a)(3) excepts from required public disclosure "information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be a party." Section 3(a)(3) is intended to protect a governmental body's position in litigation by forcing parties seeking information relating to litigation to obtain it through discovery, if at all. Open Records Decision No. 551 (1990). For information to be excepted from public disclosure by section 3(a)(3), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). This office has previously ruled that adversarial administrative proceedings constitute litigation for the purposes of section 3(a)(3). Open Records Decision Nos. 588 (1991); 556 (1990); 474 (1987).

The City states that the requested information relates to the workers' compensation claim of a Brackenridge Hospital employee. The requestor admits that the requested information relates to a benefits review conference before the Texas Workers' Compensation Commission, and that the information is necessary to "make an informed argument regarding etiology of our client's Hepatitis A." We conclude that litigation is pending, the requested information relates to the pending litigation, and therefore the requested information is excepted by Open Records Act section 3(a)(3).

Because we resolve this matter pursuant to Open Records Act section 3(a)(3), we do not address your claim that this information is also excepted by sections 3(a)(1) and 3(a)(2). Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-384.

Very truly yours,

  
Geoffrey Hennessey  
Assistant Attorney General  
Opinions Committee

GH/lmm

Ref.: ID# 16330  
ID# 16331  
ID# 16428

cc: Mr. Michael M. Allen, Jr.  
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